

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08-08-2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

CRIMINAL REVISION CASE No.714 OF 2004

M.Gurudoss

..Petitioner/ Witness No.2

-vs-

Ramnath Goenka (since deceased)
S/o Basanthilal Goenka
Director
M/s Traders Pvt.Ltd..
Express Towers
Nariman Point
Bombay

1. Saroj Goenka
W/o Late B.D.Goenka
Director
M/s Traders Pvt.Ltd..
Express Towers
Nariman Point
Bombay
2. Arathi Agarwal
Former Director
M/s Traders Pvt.Ltd..
3. V.Ranganathan
Former Director
M/s Traders Pvt.Ltd..
4. M/s Traders Pvt.Ltd..
Express Towers
Nariman Point
Bombay
5. Dy.Chief Controller of
Imports and Exports,
Chennai

..Respondents/complainants

This revision is filed against the order passed in CrI.M.P.No.197 of 1997 in E.O.C.C.No.341 of 1989 on the file of Additional Chief Metropolitan Magistrate, Economic Offences No.1, Chennai dated 10.2.2004.

For petitioner

: Mr.V.Gopinath
Senior Counsel
for Mr.S.Ananthanarayanan

For respondents No.5
For Respondent No.1

: Mr.N.Chandrasekaran,
: Mr.Vijayaraghavan
Notice sent service
awaited-R2 to R4

O R D E R

The order passed in CrI.M.P.No.197 of 1997 in E.O.C.C.No.341 of 1989 on the file of the Additional Chief Metropolitan Magistrate, Economic Offences No.1 Egmore, Chennai is under challenge before this Court.

2. The grievance of the revision petitioner, who is cited as witness No.2 in E.O.C.C.No 341 of 1989 is that in a similar case in C.C.No.766 of 1987 filed by Directorate of Revenue Intelligence for an offence under Section 120(B) of IPC and Section 132, Section 135(1)(a) and 135(1)(b) of the Customs Act, wherein he has been arrayed as A15 and that if he is allowed to depose as a witness in E.O.C.C.No.341 of 1989 which has been filed by Deputy Chief Controller of Imports and Exports for an offence under Section 120(B) of IPC and under Sections 5 and 6 of the Imports and Exports(Control) Act wherein he has cited as prosecution witness. According to the revision petitioner, if he deposes as a witness in E.O.C.C.No.341 of 1989 that will affect his case in C.C.No.766 of 1987 wherein he is arrayed as an accused.

3. Mr.V.Gobinath, the learned Senior counsel appearing for the revision petitioner would contend that if the revision petitioner is allowed to depose as a witness in E.O.C.C.No.341 of 1989 that will in a way contrary to the provision contemplated under Article 20(3) of the Constitution of India.

4. Per contra, Mr.N.Chandrasekaran, the learned Special Public Prosecutor for CBI Cases would state that under Section 132 of the Indian Evidence Act every protection will be given to a witness as per the proviso to Section 132 of the Indian Evidence Act and if this revision is allowed that will amount to bad precedent for other cases pending before the Subordinate Courts.

5. The learned senior counsel in support of his contention has relied on a decision reported in Nandini Satpathy-v-P.L.Dani(AIR 1978 Supreme Court 1025) wherein the passage relied on by the learned Senior counsel is at Paragraph 19,37,38,52 and 53. The learned Special Public Prosecutor in support of his contention would rely on the principles laid down in Janardan Subrao Pai-v- Chandra Kamalaksha Pai(2003 Cri.L.J.2909) wherein

it has been held that as per proviso to Section 132 of the Indian Evidence Act, deposition of an accused as a prosecution witness in another criminal case in pursuance of Court's summons cannot be termed as voluntary statement and cannot be used as evidence in pending prosecution against him except for limited purpose of giving false evidence. The learned Special Public Prosecutor would also rely on a decision reported in State(Delhi Admn)-v- Jagjit Singh(1989 L.W.(cri)430 wherein while dealing with the evidence of an approver it has been held by the Apex Court that it is the duty of the prosecution to examine an approver as a witness even if he resiles or does not comply with the condition imposed upon him while treating him as an approver.

6. Instead of passing any order in this revision in favour of the revision petitioner or against him, I am of the view that to unravel this problem, it is better a direction can be given to the trial Court to proceed with C.C.No.766 of 1987 first in which the petitioner is an accused and after the disposal of C.C.No.766 of 1987, only E.O.C.C.No.341 of 1989 is to be proceeded with. I am of the view that if this Course is taken up then that will put an end to the present controversy in which the revision petitioner is placed with.

7. In fine, the learned Additional Chief Metropolitan Magistrate , Economic Offences No.1, Egmore, Chennai is directed to proceed with C.C.No.766 of 1987 in which the revision petitioner is arrayed as A15 first and after the disposal of C.C.No.766 of 1987, he shall proceed with E.O.C.C.No.341 of 1989 pending on his file. Both the learned counsel appearing for the accused as well as the learned Public Prosecutor appearing for prosecution are requested to extend their utmost co-operation for an early disposal of C.C.No.766 of 1987. With the above direction, the revision is disposed of.
sg

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1. The Additional Chief Metropolitan Magistrate, Economic Offences No1, Egmore, Chennai
 - 2.-do- thro the Chief Meropolitan Magistrate, Egmore.
 3. The Deputy Controller of Imports and Exports , Chennai
- + One cc to Mr. N. Chandra sekar Advocate sR 43815
+ One cc to Mr. S. Vijayaraghavan, Advocate SR 49782
+ One cc to Mr. L. Mahendran, Advocate sR 49711

SSV (co)

sg 17/8/07

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08.08.2007